



U.S. Department of Justice

Immigration and Naturalization Service

DN

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: SRC-99-164-50095

Office: Texas Service Center

Date:

AUG 21 2000

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER

[REDACTED]

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a real estate, investment, and management business, seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief in rebuttal to the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The foreign petitioner, [REDACTED] was established in 1983 and states that the U.S. entity, [REDACTED] is its majority-owned subsidiary. The United States subsidiary is primarily involved in the running of a motel. The beneficiary claims to have been employed in the foreign entity since 1983, in charge of supervising and coordinating activities of supervisory personnel. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of \$35,000.

At issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his decision, the director noted that the petitioner had not submitted evidence such as tax reports to demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel states in part that:

Since [the beneficiary] worked as an Executive Officer for [REDACTED] for over 14 years, the company is convinced that the beneficiary is uniquely qualified to fill the position of an Executive as the President of Veneflo Properties, Inc.

...[The beneficiary] is responsible for organizing, directing and developing the company, which requires that [the beneficiary] establish goals, policies, and objectives of the organization in order for him to organize, direct and develop the company effectively. In effect, his responsibility of setting goals and policies are subsumed in his capacity as Executive who organizes, directs and develops the company.

...[The beneficiary] is responsible for calling on individual and prospective clients, representing the company and negotiating with domestic and foreign customers, which represents directing a major component or function of the organization...

Moreover, [REDACTED], the Office and property Manager, is reporting daily to [the beneficiary] about the activity of [REDACTED] and in this way he is directing the management of the organization.

The above description of the beneficiary's duties is in part a paraphrasing of the statutory definitions of managerial and executive capacity. It is not a comprehensive description of the beneficiary's actual daily activities. The record indicates that the U.S. entity was incorporated on August 29, 1997, and the present petition was filed on May 3, 1999. The quarterly tax report indicates that at the time of the filing of the petition, the U.S. entity had six employees. The U.S. entity's 1998 corporate tax return reflects \$14,124 in gross receipts/sales; \$0 in compensation of officers; and \$0 in salaries and wages. The U.S. entity's organization chart reflects the following positions: the beneficiary as the president; the beneficiary's wife as the vice president; the front desk clerk; maintenance; and housekeeping. In a letter dated September 27, 1999, counsel indicated that the beneficiary's wife is a shareholder of the U.S. entity, but is not actively involved in the company's business. As such, the record indicates that the beneficiary performs the duties of a first-line supervisor over nonprofessional employees, namely, the front desk clerks, maintenance, and housekeeping. It is noted that the organization chart does not contain an "office and property manager" position as mentioned above by counsel. It appears that such position may have been created after the filing of the present petition. Title 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

When seeking classification of an alien as a manager based on managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a

high-level position within the organizational hierarchy, or with respect to the function. The record must demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. The record must further demonstrate that there are qualified employees to perform the function so that the beneficiary is relieved from performing nonqualifying duties. Evidence in the record is not persuasive that the U.S. entity, a motel, contains the organizational complexity to support an executive/managerial position. As such, the record does not reflect that the beneficiary will function at a senior level within an organizational hierarchy. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary has been employed abroad in a primarily managerial or executive capacity, or that the U.S. entity is doing business. As this matter will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.